

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8074 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -
2. To be referred to the Reporter or not? -
3. Whether Their Lordships wish to see the fair copy of the judgement? -
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge?
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B K PANCHAL

Versus

STATE OF GUJARAT

Appearance:

MR DP VORA WITH MR RR TRIPATHI for Petitioners
MR ST MEHTA for Respondent No. 1 AND 2
SERVED for Respondent No. 3
MR PS PATEL for Respondent No. 4

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 23/09/98

ORAL JUDGEMENT

1. By means of this petition, the petitioners sought for a direction for exclusion of the names of the respondents no. 3 and 4 in the seniority list of the Office Superintendent published by the letter dated 25-6-1991 and to consider the petitioners for promotion to the post of Deputy Assistant Superintendent of Stamps on the basis of the seniority in the cadre of the Office Superintendent after excluding the names of the respondents no. 3 and 4 from that list.

2. The petitioners are working as Office Superintendent in the office of the Superintendent of Stamps. Some vacancies of Deputy Assistant Superintendent of Stamps were notified. The respondents no. 3 and 4 were also included in the seniority list as Legal Assistant in the year 1991. The procedure for promotion is as follows :

Addl. Supdt. of Stamps (Class - II)

:

Dy. Supdt. of Stamps (Class-I)

:

Asstt. Supdt. of Stamps (Class-II)

:

Dy. Asstt. Supdt. Chief Stamp Deputy Assistant of
of Stamps Inspector Stamps.
(Legal & Vigilance)

:

Office Superintendent (Class - II)

Inspector of Head Clerks Accountant
Stamps.

:

Sr. Clerk/Store Keeper/Cashier

:

Clerk/Cleru-cum-typist/Typist/Stamp Vendor.

3. The Rules were framed by the Government Notification dated 29-11-1977, whereby appointment to the post of Deputy Assistant Superintendent of Stamps was to be made by promotion from a person having proved merits and efficiency amongst person working as Assistant Superintendent. Those Rules do not include the cadre of the Legal Assistant for promotion of the Deputy Assistant Superintendent of Stamps. The cadre of Legal Assistant was created by the Rules dated 13-6-1992 (Annexure-B) whereby the Legal Assistants were to be appointed by the promotion on the basis of proved merits and efficiency amongst persons working as Inspector of Stamps or Head Clerk or Accountant who possesses degree in law of the recognised University and who have worked for not less than five years on any post of combined service, on any of the posts mentioned above though in special circumstances, the arrangement should be made, in proviso

to Sub-Rule 2 of the Rules dated 30-6-92. Rules were again amended by the Government by the Notification dated 6-11-1993 whereby the Deputy Assistant Superintendent of Stamps, Class-II were to be appointed by promotion of a person having proved merits and efficiency from amongst persons who have worked not less than seven years on any or both the Cadre of Office Superintendent or Legal Assistant though some relaxations have been provided by the proviso to this Rule. By these Rules dated 6-11-1993 the petitioner being the Office Superintendent and the respondents no. 3 and 4 claimed for Legal Assistant, are merged and they were placed at par.

4. Learned counsel for the petitioner submitted that four vacancies of Deputy Assistant Superintendent of Stamps took place in the year 1992. At that time the Rules framed in the year 1993 were not in existence and the cadre of Legal Assistant was separate and it was not merged with the Office Superintendent. Hence, in view of the Notification dated 29-11-1977 they are only entitled to be promoted in the cadre of Deputy Assistant Superintendent of Stamps. The contention of the learned counsel for the respondents no. 3 and 4 is that the vacancies have yet not been filled up and that cadre has also been merged with the cadre of the Office Superintendent. The inclusion of the respondents no. 3 and 4 in the year 1991 has been validated by the Rule provided in the Notification dated 6-11-1993. Hence, they are entitled to the promotion of post of Deputy Assistant Superintendent of Stamps which are fallen vacant and still the posts are vacant. It is a settled law that no person can claim promotion. But he has right for consideration for promotion. The petitioners have also made prayer for a direction to the respondents no. 1 and 2 to consider them for promotion. Process of promotion has to be started by the respondent no. 2 and the appointment has to be made by the respondent no. 1.

5. I do not think it proper to record any finding at this stage that the petitioners are only eligible for promotion in view of the Rules framed vide Notification dated 29-11-1977. It has to be determined by the respondents no. 1 and 2 as to which persons are eligible for promotion to the post of Deputy Assistant Superintendent of Stamps by promotion. The respondents no. 1 and 2 are directed to consider the case of petitioner no. 1 B.K. Panchal, petitioner No. 5 B.J. Patel, petitioner No. 6 M.D. Joshi, respondent no. 3 P.K. Parekh and respondent no. 4 T.M. Pandya, in accordance with law, within a period of three months from the date of production of a certified copy of this order.

As the Court is informed by the learned counsel for the petitioners that the petitioner no. 2 has died and the petitioners no. 3 and 4 have already retired their case cannot be considered at this stage. In case the petitioners no. 2, 3 and 4 were also eligible at the relevant time, the respondents are at liberty to consider their case in accordance with law.

6. With the above observations, this petition stands disposed of. Rule is discharged, with no order as to costs. Interim relief, if any, stands vacated. D.S. is permitted.

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